

GOVERNMENT OF TELANGANA
ABSTRACT

Tribal Welfare Department – Telangana State – Khammam District – Revision Petition filed by Sri Golla Gopaiah S/o Lingaiah, R/o Nacharam Village, Enkoor Mandal of Khammam District and 3 others against the orders of the Additional Agent to Government, Bhadrachalam in CMA No. 55/2005 dated 28.07.2007, in respect of land admeasuring acs. 7.13 gts in Sy.No.375/6 situated in Nacharam village of Enkoor Mandal, Khammam District – DISMISSED – Orders – Issued.

TRIBAL WELFARE (LTR) DEPARTMENT

G.O.Ms.No. 1

Dated: 10-01-2024
Read the following:-

1. Orders of the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR Case No.70/98/ENK, dated 18.01.2005.
2. Orders of the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam in CMA No. 55/2005 dated: 28.07.2007.
3. Revision Petition filed by Sri Golla Gopaiah S/o Lingaiah, R/o Nacharam Village, Enkoor Mandal of Khammam District and (3) others, dated 11.11.2007.
4. Govt.Memo.No.7849/LTR-2/2007-1, dated 03.01.2008.
5. Orders of the Hon'ble High Court in WP No.27454/2007 dated 28.01.2008.
6. From the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, RP.No. 7849/LTR-2/2007-1 (CMA No.55/2005), dated 20.11.2008.
7. From the Special Deputy Collector (TW), Bhadrachalam, LTR case No.70/1998/ENK, dated 27.12.2008.
8. Govt.Letter.No.7849//TW.LTR/2006, dated 10.4.2018, 28.05.2018, 23.07.2018, 21.08.2018, 27.11.2019.

ORDER:-

In the reference 3rd above, Sri Golla Gopaiah S/o Lingaiah, R/o Nacharam Village, Enkoor Mandal of Khammam District and 3 others have filed Revision Petition along with Stay Petition through his Counsel before the Government under Section 6 of the AP Scheduled Areas Land Transfer Regulation 1/1959 against the orders of the Additional Agent to Government, Bhadrachalam in CMA No. 55/2005 dated 28.07.2007, in respect of land admeasuring acs. 7.13 gts in Sy.No.375/6 situated in Nacharam village of Enkoor Mandal, Khammam District, brief history of the case as follows:

2. The history of the case is that the Special Deputy Collector (TW), Paloncha/Bhadrachalam had initiated (3) LTR cases as detailed below:

- i) Case No.1763/93/ENK on the petition of Sri Nunavath Samya R/o Nacharam (tribal petitioner) against Sri Golla Gopaiah (non-tribal respondent) in respect of land admeasuring acs.3.20 gts situated in Sy.No.375 in Nacharam village of Enkoor Mandal in the erstwhile Khammam District. The non-tribal respondent Golla Gopaiah deposed that the suit land was not purchased from the tribal petitioner but belongs to his grandfather Sri Maddala Ramakoti who is the pattedar and the suit land came to his mother's share. The tribal petitioner is not pattedar and hence the APSA LT Regulation I of 1959 R/W 1/70 is not applicable. Therefore, the petition was dismissed on 31.1.1994.
- ii) Case No.1762/93/ENK on the petition of Sri Nunavath Samya R/o Nacharam (tribal petitioner) against non-tribal respondents viz., 1) Padimala Gopaiah and 2) Padimala Lachiah in respect of land admeasuring acs.3.20 gts situated in Sy.No.375 in Nacharam village of Enkoor Mandal in the erstwhile Khammam District. Non-tribal respondents deposed that the suit land was not purchased from the tribal petitioner. Pattedar is Sri Maddala Ramakoti who is brother of respondents. Pahani 1991-92 issued by Mandal Revenue Officer, Enkoor

(P.T.O)

revealed that tribal petitioner is not pattedar. Sri Maddala Ramakoti is pattedar of suit land. Therefore, the Regulation I of 1959 read with Regulation I of 1970 is not applicable. Hence, the petition was dismissed on 31.1.1994.

- iii) Case No.70/98/ENK on the petition dated 22.7.1998 of Sri Nunavath Samya S/o Hatya (tribal petitioner) against non-tribal respondents viz., 1) Golla Gopaiah 2) Padhimalla Gopaiah 3) Padhimalla Lakshmaiah and 4) Padhimalla Ramakotaiah, residents of Nacharam and Repallewada villages respectively in Enkoor Mandal of erstwhile Khammam District in respect of land admeasuring acs.7.13 gts situated in Sy.No.375/6 in Himamnagar village under Nacharam Revenue Village of erstwhile Khammam District. Respondents failed to produce documentary evidence. Records previously filed by the respondents reveal that the then Special Deputy Collector (TW), Palvantha had passed order in LTR case Nos.1762/93 and 1763/94, dated 31.1.1994 stating that the tribal petitioner is not pattedar and LTR is not applicable, but title and possession of respondents over the land was not discussed as to whether the land was purchased prior to 3.2.1970 or later 3.2.1970. It is clear from the documents filed by Respondents 3 and 4 that they purchased the land in Sy.No.375 to an extent of 0.30 gts and in Sy.No.375 to an extent of acs.3.20 gts from Sri Padhimalla Bhadrappa S/o Akkalaiah and Sri Padhimalla Ramakotaiah S/o Veeraiah on 19.4.1973 and on 24.4.1973 respectively which established transaction took place between non-tribals after 3.2.1970. Pahani of 1997-98 reveal that Sri Padhimalla Ramakotaiah is pattedar and respondents are occupants. Tribal petitioner is no way concerned to the suit land. Hence, it is proved that transfer of immovable property situated in agency area belonging to non-tribal was made to another non-tribal in contravention of sub-section of Section 3 of AP Scheduled Areas Land Transfer Regulation I of 1959 R/W Regulation 1/70 which came into force w.e.f. 3.2.1970, is null and void. In the reference 1st read above, the Case No.70/98/ENK was disposed on 18.1.2005 directing the Mandal Revenue Officer, Enkoor to take over the land into government custody for assigning it to the eligible tribals as per rules in force.

3. Aggrieved by the above orders dated 18.1.2005 of Special Deputy Collector (TW), Bhadrachalam, the non-tribals Sri Golla Gopaiah, Padhimalla Gopaiah, Padhimalla Lakshmaiah and LR of late Padhimalla Ramakotaiah viz., residents of Nacharam and Repallewada villages in Enkoor Mandal had filed statutory appeal before the Additional Agent to Government, Bhadrachalam which was numbered as CMA No.55/2005 and dismissed on 28.7.2007 in the reference 2nd read above, with the following findings:

- Appellant contended that the 4th respondent died long back prior to initiation of case, but this was not brought to the notice of lower court nor filed any death certificate and even before this court also. Therefore, it cannot be presumed that the 4th respondent died. Further, appellant has not filed orders of LTR cases in 1762/93 and 1763/93 to prove that his case will come under Resjudicata.
- With regard to another contention that schedule land belongs to Padamalla Veeraiah and one share was given to daughter Ramulamma who is wife of appellant, but appellant not filed any proof of alleged relationship between appellant and Padhimalla Ramakoti.
- In the pahani 1974-75 it was clearly mentioned that 3.26 gts was purchased by Golla Lingaiah which is contrary to version of appellant and against the Regulation. Therefore, appellant version that his wife got land from Ramakoti is not believable.
- The lower court rightly passed ejectment orders and the same was confirmed.

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4. Aggrieved by the above orders of the Additional Agent to Government, Bhadrachalam, the revision petitioners viz., 1) Golla Gopaiah 2) Padhimalla Gopaiah 3) Padhimalla Lakshmaiah and 4) Padhimalla Krishnaiah have filed the present Revision before the Government on 15.11.2007 in the reference 3rd read above, urging the following grounds:

- i) The 1st respondent (Additional Agent to Government, & Project Officer, ITDA Bhadrachalam) has totally failed to consider and appreciate the written arguments filed on 10.09.2005 on behalf of the petitioner herein and passed order under revision without any justification. Therefore, the impugned order is liable to be set aside in obedience of the decision of the Hon'ble High Court of Judicature AP as reported in 2003 (3) ALT page-127 and 2005 (2) ALT page-462 wherein the Hon'ble High Court declared that order passed without considering the written arguments cannot be sustainable under law.
- ii) The 1st Respondent having considered the averment that the 2nd respondent (Special Deputy Collector (TW), Bhadrachalam) has not at all conducted any enquiry and that the order is on presumptions and assumptions and not in appreciation of the earlier orders passed by the same authority in its case file Nos.1763/93 and 1762/1993 dated 31.01.1994 respectively, and therefore the order is not only arbitrary and barred by principle of resjudicata, but also against the decision of the Hon'ble High Court of A.P., reported in ALT (Revenue) 2000 page-66 & 81. Similarly, the respondents 1 & 2 having noticed that there is no tribal interest involved in the schedule land, applying the presumption envisaged under the Regulation 1/1970 is contrary to the spirit of the legislation and against the decision of the Hon'ble High Court reported in 1978 (2) APLJ page-292.
- iii) The 1ST respondent failed to note that when there were earlier proceedings by the 2nd respondent in respect of the schedule land between the same parties and consequent orders dated 31.01.1998 in LTR case Nos.1763/93/ENK & 1762/1993/ENK, the very subsequent proceedings in LTR case No.70/98/ENK and the consequent impugned order before it by the very same authority i.e. to say the 2nd respondent in a manner reviewing the earlier orders is not sustainable under Law and is not only without jurisdiction but also against the decisions of the Hon'ble High Court of Judicature, AP Hyderabad reported in 2005 (4) ALD page=498 and ALT 2000 (1) Page-4 (Letters Patent).
- iv) The 1st& 2nd Respondents not justified in directing the 3rd respondent to take over possession of the schedule land for the purpose of assignment to the members of Scheduled Tribe without appreciating the provisions of Sedc.3(2)(a) of the L.T. Regulation 1/1959 and failed to consider decision of the Hon'ble High Court in Vasudha Mishra's case as reported in 1998 (1) ALT 680, and failed to follow the guidelines issued by the Hon'ble High Court in the said case and failed to note that, as per the said provision of Law, the Government cannot take possession of the schedule land and on the other hand the schedule land is liable to be restored to the legal heirs of the pattedar, who are no other than the appellants 2 to 4 and wife of the appellant No.1.
- v) The 1st Respondent failed to consider contention of the appellant that the schedule land originally acquired by the grandfather of 4th appellant viz., Padhimalla Veeraiah and that he was succeeded by his three sons viz., Padhimalla Bhadraiah (father of 2nd appellant) and Padhimalla Lakshmaiah (father of 3rd appellant) and father of 4th appellant viz., Padhimalla Ramkotaiah, and the deceased Padhimalla Ramkotaiah died leaving behind him his only daughter Padhimalla Ramulamma @ Golla Ramulamma, who is wife of the 1st appellant

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herein and thus there is only succession of the schedule land by the appellant herein, and the question of transfer does not arise, passing the order for some other reason is arbitrary and without jurisdiction, and the 1st respondent failed to note and consider that, when a person is claiming the property under a transaction whether registered, unregistered, or void took place prior to the commencement of the Regulation 1/70, the authorities under the Regulation have no jurisdiction to go into the merits and demerits of the said transaction as much as a Civil Court while exercising the powers under Regulation 1/1970, and failed to appreciate the rule of Law declared by the full bench of the Hon'ble Supreme Court of India in this regard as reported in 1995 (6) SCC page-545 and the consequent decision of the Hon'ble High Court reported in ALT (Revenue) 2000 page-66 & 81. Therefore, the order under revision is against the decisions of the Hon'ble Supreme Court of India, and the Hon'ble High Court, and hence cannot be sustainable.

- vi) 1st Respondent not at all exercised his powers as an appellate authority and ought to have at least remanded the case for *denovo* enquiry to the 2nd respondent by giving an opportunity to prove the averments by producing deemed evidence before the 2nd respondent during trial, and failed to appreciate that, the 2nd respondent passed the order without any trial or enquiry and ought to have set aside the impugned order.
- vii) 1st Respondent in the absence of any counter averments from the respondents to the appeal before it, ought to have accepted the contents of the appellants and ought to have given an opportunity of being heard in due process of law, but on the other hand without considering the written arguments filed on behalf of the appellants passed order under revision and thus caused grave prejudice to the appellants.
- viii) The observations of the 1st respondent in the order under revision are self-contradictory, as one had it observed that, it has verified the lower court records, and on the other hand observed that, the appellants have not filed the previous orders of the 2nd respondent to apply the principle of Resjudicata, as the 2nd respondent in his impugned order dated 18.01.2005 specifically admits filing of the said orders before it by the appellants herein. Therefore, the order under revision by the 1st respondent is not in appreciation of the lower court records, impugned order before it, or on the contentions raised by the appellants. Therefore, the order is liable to be set aside.
- ix) The observations of the 1st respondent & 2nd respondent on the strength of the alleged pahani entries made in the village accounts maintained by the 3rd respondent for fiscal purpose for collection of Land revenue and passing order without conducting any enquiry and without appreciating the pleadings of the appellants is absolutely arbitrary and is against the decision of the Hon'ble Supreme Court of India reported in 2007 (7) SCJ 33 (para-9), AIR 1994 SC 1653 and AIR 1997 S.C. 2181, that the entry made in the revenue register cannot form the basis for declaration of title of any person.
- x) The observation of the 1st respondent that unless a death certificate is produced no person's death can be considered as true is not correct and failed to note that, in the absence of any death certificate (s) death can be proved on various methods, and ought to have given opportunity to prove the death of the father of the 4th appellant herein by taking up the enquiry by way of issuing summons to the other legal heirs of the deceased as well as the village elders.

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- xi) The 1st respondent or the 2nd respondent not raised any issue during the course of proceedings, directing the appellants to prove the relationship of the wife of the 1st appellant with the appellants 2 to 4 herein, and more particularly when the appellants 2 to 4 admitting the relationship that the wife of the 1st appellant is the biological sister of the 4th appellant herein, denying the said relationship by the 1st respondent, in the absence of any contra averment or contra evidence is purely arbitrary, and causing grave prejudice to the appellants.
- xii) 1st Respondent totally failed to consider and apply its mind judiciously to the referred decisions of the Hon'ble High Court of A.P. and the Hon'ble Supreme Court, and the procedural defects and jurisdiction point in the Lower Tribunal file before it, including the guidelines issued by the Hon'ble High Court of A.P. reported in ALT 1998 (1) page-680 and the contents of the written arguments and passed orders without giving any reasons for not considering them.
- xiii) The 1st respondent failed to note and consider that, being the appellate authority it is under obligation to set aside the impugned order before it confirm it, or partially accept it or set aside the same, but instead of confining its authority to the said extents, giving a specific direction once again to the 3rd respondent for taking over possession contrary to the provisions of the Regulation 1/1970 is causing grave prejudice to the appellants.
- xiv) The impugned orders of the 1st and 2nd respondents without appreciating the fact that the appellants are landless poor persons and that there is no tribal interest or government interest involved in the schedule land, and directing for ejectment of the appellants from the schedule land and to take possession by the Government, without conducting any enquiry even in summary manner, more particularly when the appellants are contesting that the schedule land was acquired by them by way of succession from their ancestral and not by way of transfer, cannot be sustained under Law and is against the decision of the Hon'ble Supreme Court of India reported in 1982 (2) APLJ 7 (S.C).

5. The Revision Petitioners have also filed Stay Petition to stay their dispossession from the land admeasuring acs.7.13 gts in Sy.No.375/6 situated at Nacharam village, Enkoor Mandal, Khammam District, pending disposal of the Revision petition, while directing the respondents to maintain the status quo as on 18.01.2005 in LTR case No.70/98/ENK on the file of the 2nd respondent (Special Deputy Collector (TW), Bhadrachalam) with regard to the possession over the schedule land, in the interest of justice.

6. In the reference 4th read above, Government while communicating a copy of the Revision Petition has requested the Project Officer, ITDA & Additional Agent to Government, Bhadrachalam to send para-wise remarks and connected case records in the matter.

7. Further, the Revision Petitioners have filed WP No. 27454 of 2007 before the Hon'ble High Court of Andhra Pradesh at Hyderabad. In the reference 5th read above, the WP No. 27454 of 2007 was disposed on 28.1.2008 – operative part of which is drawn hereunder:

"As much as the petitioners have already availed the remedy of revision against the orders of eviction passed by the 3rd respondent-Special Deputy Collector as confirmed by the appellate authority, by filing the same on 15th of November 2007, and in view of the pendency of that revision petition, it is not desirable to record any finding on merits in this writ petition. But however, it is to be seen that the proceedings initiated against the predecessors in title of the petitioners were rejected by one authority as early as on 31st of January, 1994, and ever since, as the petitioners are in longstanding possession, and

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also in view of various grounds taken by the petitioners in this writ petition, I deem it appropriate that the petitioners shall be allowed to continue in possession over the land in question till disposal of the revision petition filed by them before the 1st respondent on 15th of November, 2007.

In these circumstances, the writ petition is disposed of, directing the 1st respondent to dispose of the revision filed by the petitioners as expeditiously as possible and there shall be a further direction to the respondents not to evict the petitioners from the petition schedule property covered by LTR case No.70/1998/ENK till the disposal of the revision petition filed by them before the 1st respondent.

Subject to the above directions, the writ petition is disposed of. No order as to costs.

8. In the reference 6th read above, the Additional Agent to Government, Bhadrachalam has submitted following para-wise remarks along with record pertaining to appeal in CMA 55/2005:

- 1st Respondent herein has passed orders only after perusal of the documents and written arguments – therefore, it is not correct to say that the 1st respondent failed to appreciate the written arguments filed on behalf of petitioner.
- The petitioner has not filed copy of the order in LTR case No.1762/93 & 1763/93 but simply mentioned in the appeal grounds without filing the said orders – hence, his plea was not accepted by the 1st respondent. The burden of proof lies on the non-tribal revision petitioner to show that their possession is lawful and not hit by the Regulation. As seen in lower court order passed by the 2nd respondent herein (Special Deputy Collector (TW), Bhadrachalam) in LTR case No.70/98/ENK, it is stated as per the documents filed by the 3rd respondent it is evident that the schedule land was purchased on 19.04.1973 and 24.4.1973. These two documents clearly prove that the transaction is after the commencement of Land Transfer Regulation i.e. after 3.2.1970. The petitioners suppressing the facts of the order dt.18.01.2005 passed in LTR case No.70/98/ENK and want to take shelter under principle of Resjudicata.
- With regard to another contention of revision petitioner that the 1st and 2nd respondents have not justified in directing the 3rd respondent to take over possession of schedule land for assignment to scheduled tribe without appreciating provisions – as per judgement of the Hon'ble High Court of AP in WA No.78/1991 and 1664/1988 and WP Nos.13377/1986, 13470/86, dt.13.02.1993 published in 1993 (1) ALT 409 (FB) in Vemula Somalamma v/s Special Deputy Collector (TW) Rampachodavaram – “when a non-tribal transfers the land to a non-tribal in contravention of the provisions of Sec.3(1)(a), he will not be entitled to ask the authorities for restoration of the property in his favour invoking the provisions of clause (a) of sub-sec.(2) of Sec.3. The said clause will not apply to a non-tribal transferor”. As per the decisions of the Hon'ble High Court, the lower court rightly passed ejectment orders.

9. In the reference 7th read above, the Special Deputy Collector (TW), Bhadrachalam has submitted the record pertaining to LTR case No.70/1998/ENK.

10. In the reference 8th read above, Government have issued notices and the case was called on;

21.04.2018	..	Adjourned
23.06.2018	..	Adjourned
28.07.2018	..	Adjourned
01.09.2018	..	Both parties called absent.
		Adjourned.
27.10.2018	..	Adjourned

(Contd...7)

07.12.2019 .. Counsel for petitioner Sri Nanduri Srinivasa Rao present and submitted oral arguments corroborating with the grounds urged in the Revision Petition.

11. Findings

- The then Special Deputy Collector (TW), Paloncha in the first two cases i.e. 1762/93/ENK and 1763/93/ENK had only arrived at establishing that the tribal petitioner is neither pattedar nor enjoyer and did not proceed further to establish whether the non-tribal respondents have legitimate rights over the land as these cases were initiated to find out whether any illegal transactions/possession by the parties took place in contravention of Regulation I of 1959 R/W Regulation I of 1970. In the third case i.e. 70/98/ENK, the Special Deputy Collector (TW), Bhadrachalam had enquired into the matter in detail and found new facts of illegal possession of suit schedule land by the non-tribal respondents in contravention of the provisions of the Regulation I of 1959 R/W Regulation I of 1959 elicited from the material documents produced by the Respondents i.e. sale agreements dated 19.4.1973 and 24.4.1973 wherein land to an extent of acs.0.36 gts and 3.20 gts was purchased from Sri Padhimala Bhadrachalam S/o Akkulaiah (to Padhimala Lakshmaiah S/o Veeraiah) and Sri Padhimala Ramakotaiah S/o Veeraiah (to Golla Lingaiah S/o Hanumaiah) respectively. Admittedly, these two transactions took place after commencement of the Regulation I of 1970 came into force in agency area (i.e. Nacharam village) after 3.2.1970.
- Both the authorities i.e. Special Deputy Collector (Tribal Welfare), Bhadrachalam (in LTR case No.70/98/ENK) and the Additional Agent to Government & Project Officer, ITDA, Bhadrachalam (in CMA 55/2005) have rightly passed orders on 18.1.2005 and 28.7.2007.

12. Government, after careful examination of the matter do not find any reason to interfere with the orders by both the lower and appellate authorities i.e. Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR case No.70/98/ENK dated 18.01.2005 and Additional Agent to Government & Project Officer, ITDA Bhadrachalam in CMA No. 55/2005 dated 28.07.2007 and accordingly DISMISS the Revision Petition filed by the petitioners viz., Golla Gopaiah and 3 others in respect of land admeasuring acs. 7.13 gts in Sy.No.375/6 situated in Nacharam, agency village of Enkoor Mandal of Khammam District.

13. The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam, Bhadrachalam District shall take necessary further action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

Dr. A.SHARATH
SECRETARY TO GOVERNMENT

To

The Additional Agent to Government & Project Officer, ITDA, Bhadrachalam
Bhadrachalam District (By RPAD)

The Special Deputy Collector (Tribal Welfare), Bhadrachalam,
Bhadrachalam District (By RPAD)

Sri Golla Gopaiah S/o. Lingaiah,
R/o.Nacharam village, Enkoor Mandal, Khammam District (By RPAD)

Sri Padhimalla Gopaiah S/o. Bhadrachalam,
R/o.Nacharam village, Enkoor Mandal, Khammam District (By RPAD)

Sri Padhimalla Lakshmaiah S/o Bhadrachalam,
R/o Repallewada Village, Enkoor Mandal, Khammam District. (By RPAD)

Sri Padhimalla Krishnaiah S/o Ramkotaiah,
R/o Repallewada Village, Enkoor Mandal, Khammam District. (By RPAD)

Sri Nunavath Samya S/o Bhukya,
R/o Nachavaram Village, Enkoor Mandal, Khammam District (By RPAD)

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Copy to:-

The Agent to Government & District Collector, Khammam District.

Sri Nanduri Srinivasa Rao, & Sri K.Srimannarayana, Advocates,
Bhadrachalam, Bhadradri Kothagudem District. (By RPAD)
(Counsel for the petitioner)

The Tahsildar, Enkoor Mandal, Khammam District (By RPAD)

(With a direction to serve the copy of GO to concerned parties).

The P.A to Secretary(TW)

SC/SF.

//FORWARDED::BY ORDER//

SECTION OFFICER